
Criminal Appeal No. 850 of 1995.

The State of Gujarat

Vs.

Manharbhai Maganbhai Talpada.

Misc.Criminal Appln.No. 3458 of 1995.

Manharbhai Maganbhai Talpada.

Vs.

State of Gujarat

Criminal Appeal No. 907 of 1995.

Manharbhai Maganbhai Talpada.

Vs.

The State of Gujarat.

Appearance:

1. Criminal Appeal No. 850 of 1995
PUBLIC PROSECUTOR for Petitioner
MR KB ANANDJIWALA for Respondent.

2. Misc. Cri.Appln.No. 3458 of 1995.
Mr.K.B.Anandajiwala for Petitioner.
Mr.S.R.Divetai for Respondent.

3. Criminal Appeal No. 907 of 1995.
Party in Person
Mr.S.R.Divetia for Respondent.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 06/08/96

ORAL JUDGEMENT

Common Judgment (Oral)

Both these Criminal Appeals are directed against the common judgment and order dated 31.7.1995 passed by the Special Judge, Vadodara in Criminal Miscellaneous Application No. 64 of 1995 and Criminal Miscellaneous Application No. 974 of 1994 and both these appeals are therefore decided by this common order.

By the aforesaid order dated 31.7.1995 the Special Judge, Vadodara partly allowed the Application No. 64 of 1995 and the Application No. 974 of 1994 issuing attachment with respect to the property shown in Schedule 'A' as described in the impugned order dated

31.7.1995 i.e. cash amount of Rs.5,97,000/- and immoveable property viz. S.No.551/2 Block No. 564 situated at village Chuva, district Kheda standing in the name of Smt. Shardaben shown in schedule 'F' as described in the impugned order. For rest of the properties mentioned under schedule 'F' no attachment was granted. The property shown in schedules 'B' to 'E' were ordered to be returned on furnishing solvant security of Rs.4,00,000/- or personal bond of like amount with a condition to produce cash amount of Rs.3,10,000/- as and when ordered by the Trial Court.

This impugned order dated 31.7.1995 has been challenged by the State of Gujarat in Criminal Appeal No. 850 of 1995 to the extent of the denial of the attachment of the properties mentioned in schedule 'F' other than the immovable property i.e. S.No.551/2 , Block No. 564 situated at village Chuva, district Kheda in the name of Smt.Shardaben and the return of the property i.e. investment as contained in Schedule 'B' to 'E'. The Appellant Manharbhai Maganbhai Talpada in Criminal Appeal No. 907 of 1995 has challenged that part of the impugned order whereby the attachment of the cash amount mentioned in Schedule 'A' alongwith the part of the properties of Schedule 'F' etc. was ordered.

CRIMINAL APPEAL NO. 907 OF 1995.

At the time of hearing Manharbhai Maganbhai Talapada, Appellant in Criminal Application No. 907 of 1995 who was present in person sought permission to withdraw this appeal with a request that it may be made clear that this withdrawal of appeal by him shall not prejudice his defence in the main trial. This request is found to be reasonable and accordingly on the request of the appellant Manharbhai Maganbhai Talpada Criminal Appeal No. 907 of 1995 is dismissed as withdrawn with the observation that the withdrawal of this appeal by him shall not prejudice his defence in the main trial. This appeal accordingly stands dismissed.

CRIMINAL APPEAL NO. 850 OF 1995.

Briefly stated the facts of the case are as under :-

Shri Manharbhai Maganbhai Talpada i.e.

respondent was holding the post of Superintendent, Prohibition and Excise, Vadodara. The complaint had been filed against him by one Shri Parshottambhai Narottambhai Gurjar alleging that Shri Manharbhai had demanded illegal gratification of sum of Rs.1500/- from him in lieu of not harassing him in connection with application submitted by him for change of place of licence of the ammonium chloride and accepted the same amount in pursuance of the struck down deal between the parties. In connection with this complaint a case was registered as CR No.14 of 1994. The Officers of the Anti-corrupcion Bureau arranged a trap and at that time the Investigating Officer found the unaccounted property moveable as well as immoveable during the course of search on 30.5.1994. The properties are alleged to have been seized in presence of two panchas and the seizure list was prepared and the copy of the same was handed over to the respondent after the preparation of panchnama of the house of the respondent in presence of the panchas.

The properties in dispute have been classified in schedule 'A' to 'F' by the Special Judge, Vadodara as under :-

"Schedule -A

Cash amount of Rs.5,97,000/-.

Schedule - B

Rs.1,01,304/-. (Schedule 'B'to'E' should be Rs.3,09,477.76 instead of Rs.3,09,304).

(a) Investment of Rs.55,000/-in Kishan Vikas Patras in the name of his wife Shardaben.

(b) Investment of Rs.13,000/- in NSC in his own name.

(c) Investment of Rs.33,304/- in NSS in his own name.

Schedule - C.

Rs.91,000/-

Investment of Rs.91,000/- in different schemes of Unit Trust in the individual names of himself, his wife and children.

Schedule - D.

Rs.52,010/-.

(a) Investment of Rs.14,810/- in purchasing

shares in various companies.

- (b) Investment of Rs. 38,200/- in purchasing debentures of various companies.

Schedule -E.

Investment of Rs.64,163-76 by opening savings banks accounts in nine different schedule banks situated at various places of Gujarat in the individual names of himself, his wife and his children.

Schedule -F.

Immovable properties as shown below :

- (a) S.No.551/2, Block No. 564 at village Chuva in Kheda district purchased in the name of his wife in consideration of Rs.19,999/- in the year 1981.
- (b) House bearing No. 248 situated in sector No.27 at Gandhinagar purchased in his own name in consideration of Rs.63,000/- in MIG Scheme of GHB.
- (c) House No. 780 situated in Sector No.18 at Gandhinagar purchased in the name of his wife in consideration of Rs. 61000/-.
- (d) Room No. 341 of Block No.29 of GHB situated at Amraiwadi Jawaharnagar Ahmedabad purchased in his own name in consideration of Rs.38,900/-."

The State of Gujarat through Assistant Director of Anti-corruption Bureau, Vadodara preferred Criminal Miscellaneous Application No. 64 of 1995 before the Special Judge where the case was pending requesting for the attachment of the above properties under section 3 of the Criminal (Amendment) Ordinance, 1944 (Ordinance No.38/40). The respondent Shri Manharbhai had filed an Application No. 974 of 1994 for return of the moveable and immovable properties. The Special Judge, Vadodara while dealing with these two applications has passed a common order dated 31.7.1995 which is impugned by the State of Gujarat in Criminal Appeal No. 850 of 1995 on several grounds and a prayer has been made that even the properties mentioned in Schedule 'B' to 'E' should not have been returned to the respondent and refusal to attach the properties mentioned in Schedule 'F' other than S.No.551/2, Block No. 564 situated at village Chuva, district Kheda was also wrong and illegal. Mr.Divetia, learned APP appearing on behalf of the Appellant- State of Gujarat has assailed the order dated 31.7.1995 and submitted that there was no justification for the return of the properties mentioned in Schedule 'B' to 'E' and all the properties mentioned in Schedule

'F' should have been attached and the learned Special Judge while passing this part of the order which is assailed in this appeal has committed an error of fact and law both. His submission is that the respondent had failed to account for the acquisition of such properties and prima facie there was a very strong case against the respondent showing assets disproportionate to his known source of earning and the reasoning on the basis of which the properties mentioned at items 'B' to 'E' have been returned is wrong and similarly refusal to attach the properties mentioned in schedule 'F' other than item (a) was also wrong. I have gone through the impugned order and the relevant record. The learned Special Judge was dealt with the application under section 3 of the Criminal (Amendment) Ordinance, 1944, which is reproduced as under :-

"3(1) Where the (State) Government (or as the case may be the Central Government) has reason to believe that any person has committed (where after the commencement of this Ordinance or not) any scheduled offence the (State Government) or as the case may be, the Central Government may, whether or not any Court has taken cognizance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for attachment under this ordinance of the money of other property which the (State Government or the case may be, the Central Government believes the said person to have procured by means of the offence or if such money or property cannot for any reason be attached of other property of the said person or value as nearly as may be equivalent to that of the aforesaid money or other property."

Reading of section 3(1) as above makes it clear that application under section 3 for the purpose of attachment could be made by the State Government in such cases. While dealing with such application the Court has to prima facie consider as to whether the concerned official could have acquired such properties. The Special Judge after holding that the respondent must have earned Rs.7,00,000/- by way of his salary and agricultural income of his wife and the income out of milk business done by his wife considered as to how much amount the Government employee could have saved reasonably. Keeping in view the earnings of an amount of Rs.7,00,000/- for the period from 1972 to 1995 the Special Judge has opined that it would not have been

impossible for him to invest a sum merely Rs.3,00,000/in different schemes as shown in schedule 'B' to 'E' and therefore the explanation tendered by the respondent in this respect prima facie was taken to be genuine and plausible and to that extent it was held by the learned Special Judge that there was no prima facie case against the respondent for commission of the alleged offence of possessing the disproportionate property to his known sources of income. He has also considered the affidavits exhibits 14, 15 and 16 which were subsequently filed before him by the respondent and his wife. The Special Judge therefore considered that according to the affidavits they had disposed of the immoveable properties except agricultural land at village Chuva standing in the name of Shardaben i.e. respondent's wife and concluded that by disposing of all these properties the respondent may have collected a handsome amount which he might have invested in deifferent schemes so as to acquire the properties in Schedule 'B' to 'E'. In para 75 the learned Special Judge has mentioned that there is no escape from the conclusion that the three immoveable properties as mentioned in Schedule 'F' at 'b' to 'd' had been disposed of by the opponent and that he was not having the title over the same and possession as well and thus no attachment could be granted with regard to the three properties except the agricultural land at village Chuva.

I find that the Special Judge has considered the material placed before him maticulously and has recorded his finding item wise. Keeping in view the earnings which the respondent could have made on the basis of the services rendered by him for the period 1972 to 1995 and also taking a note of lawful earnings of his wife out of the agricultural income or the business of milk he has prima facie opined that the respondent could have made saving of about Rs.3,00,000/- so as to invest a sum of Rs.55,000/- in Kisan Vikas Patra in the name of his wife Shardaben and NSS of Rs. 46,304/- in his own name, Rs.91,000/- in different schemes of Unit Trust in his own name and in the name of his wife and children and an amount over Rs.53,000/- for purchasing shares and debentures in various companies and over Rs.64,000/- in the Saving Bank Accounts as detailed out in Schedule 'B' to 'E' and therefore, in my opinion, this finding which is based on a careful consideration and the material for the purpose of section 3 of Criminal (Amendment) Ordinance, 1944 does not warrant any intereference at this stage and during the pendency of the trial.

The learned Special Judge has also come to the

conclusion that three immoveable properties under Schedule 'F' i.e. at item (b), (c) & (d) had already been disposed of and the respondent was neither having a title nor possession over the same and therefore no attachment in respect of these three items could be granted and therefore the learned Special Judge granted attachment only in respect of immovable property mentioned at item No.(a) of Schedule 'F' , therefore the learned Special Judge has taken sufficient care to attach those properties of the respondent about which prima facie the case was found to be proved by him and while returning the documents with regard to the investment of the properties mentioned at Schedule 'B' to 'E'.

Thus, I do not find any error of fact or law in the impugned order passed by the learned Special Judge, Vadodara and the appeal filed by the State is therefore dismissed. However, it is made clear that anything said or observed in this order would prejudice the case of the either of the parties on merits so far as the trial of the main offence is concerned and anything said or stated in this order is only for the purpose of the consideration of the matter under section 3 of the Criminal Law (Amendment) Ordinance, 1944.

Both these appeals i.e. Appeal No. 850 of 1995 and 907 of 1995 are therefore stand dismissed as above.

MISC. CRIMINAL APPLICATION NO. 3458 OF 1995.

Interim order dated 31.8.1995 stands automatically vacated since the main appeal itself has been decided and as the interim order stands vacated automatically, there is no need to pass any order in Criminal Misc.Application No. 3458 of 1995 which has become infructuous and is disposed of accordingly.

In order to avoid any confusion it is also made clear that on 24.11.1995 this Court had passed an interim order in Criminal Appeal No. 907 of 1995 modifying the Ad-interim relief granted in terms of para 8(c) in Criminal Appeal No. 850 of 1995 (i.e. filed by the State of Gujarat) to the effect that the cash amount of Rs.5,97,000/- shall be placed in fixed deposit in cumulative scheme for a initial period of five years in State Bank of India, Mandvi, Vadodara (Main Branch) in the name of the Special Judge, Vadodara and the fixed deposit receipt be handed over to the Nazir, District Court, Vadodara as ordered by the Special Judge and therefore this Court's order dated 24.11.1995 in no way disturbs the terms in which the impugned order had been

passed. Accordingly the deposit made as ordered shall continue and in case the five years period expires before the conclusion of the trial, further appropriate orders in this regard may be obtained by the parties from the concerned Trial Court.